

**UNITED STATES DEPARTMENT OF LABOR**  
**OFFICE OF ADMINISTRATIVE LAW JUDGES**

**'Notice: This is an electronic bench opinion which has not been verified as official'**

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IN THE MATTER OF:

Dated: 08/05/97

ASSISTANT SECRETARY OF LABOR FOR  
OCCUPATIONAL SAFETY AND HEALTH,

Case No. 97-STA-00011

Prosecuting Party,

and

**JAMES C. PRUITT,**

Complainant,

v.

MILLER & HARTMAN COMPANY,

Respondent.  
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**DECISION AND ORDER APPROVING SETTLEMENT**

It is hereby Ordered that the parties' Motion for Decision and Order Approving Settlement in the above-captioned matter is granted and that all of the terms of the attached Settlement Agreement and General Release are incorporated as a final Order.

\_\_\_\_\_  
The Honorable Ralph A. Romano  
Administrative Law Judge



## **SETTLEMENT AGREEMENT AND GENERAL RELEASE**

This is a Settlement Agreement and General Release between and among James Pruitt ('Pruitt'), The Assistant Secretary of Labor for Occupational Safety and Health, United States Department of Labor ("DOL"), and Miller & Hartman, Inc. ("Miller & Hartman").

WHEREAS, Pruitt was formerly employed by Miller & Hartman and was terminated from employment in January, 1994;

WHEREAS, Pruitt filed a complaint with OSHA contending, inter alia, that his termination violated the Surface Transportation Assistance Act; and

WHEREAS, on or about January 15, 1997, the Secretary issued his Findings and Preliminary Order in case 3-3500-94-007 (the "Action"), and

WHEREAS, Miller & Hartman filed timely objections to the Secretary's Findings and Preliminary Order; and

WHEREAS, Miller & Hartman has denied and continues to deny all allegations made against them by other parties, including, but not limited to, those by Pruitt and the DOL, of unlawful and otherwise actionable conduct; and

WHEREAS, the parties have reached a settlement of all claims and now wish to reduce that settlement to writing;

NOW, THEREFORE, in consideration of the mutual promises and commitments made herein, and intending to be legally bound, Pruitt, the DOL and Miller & Hartman agree as follows:

1.     Consideration. (a) Within thirty (30) days after counsel for Miller & Hartman receives a copy of this Agreement signed by both Pruitt and the DOL, Miller & Hartman will pay Pruitt the gross sum of \$30,000 (the "settlement proceeds") from which all applicable payroll deductions taken on behalf of employees will be deducted. The settlement proceeds will be paid by certified bank check, made payable to James Pruitt and forwarded to the DOL after which Miller & Hartman's monetary obligations under this Agreement shall be satisfied in full (upon delivery of the check to the offices of the DOL at 3535 Market Street in Philadelphia). As set forth in paragraph 2 of this Agreement, the settlement check shall represent a full and complete satisfaction of all of Pruitt's and the DOL's claims and potential claims against Miller & Hartman.

Pruitt agrees to pay any taxes due that are not withheld from the settlement proceeds and further agrees to defend and indemnify Miller & Hartman and hold it harmless of and from any claim or liability for not withholding taxes from said payment.

(b)     Within thirty (30) days after counsel for the DOL receives a copy of this Agreement signed by Miller & Hartman, the DOL will take all steps necessary to dismiss the Action with prejudice.

2.     Release. in consideration for the payments referred to in paragraph 1 of this Agreement, Pruitt and the DOL hereby release and discharge Miller & Hartman and all of its past and present parent, subsidiary and affiliated corporations, companies, divisions and entities, and successors and assigns, and their past and present directors, officers, managers, supervisors, employees,

attorneys and agents (all released persons and entities being referred to collectively in this Agreement as "Releasees"), from any and all debts, obligations, demands, judgments, or causes of action of any kind whatsoever (hereinafter, collectively, "Claims"), whether known or unknown, that they ever had, now have, or may have against any or all of the Releasees, for, upon, or by reason of any cause, matter, thing or event whatever occurring at any time up to and including the date and time Pruitt and the DOL sign this Agreement. Pruitt and the DOL acknowledge and understand that the Claims being released in this paragraph include, but are not limited to, (I) any Claims that were asserted or could have been asserted in the Action, (ii) any Claims against any or all of the Releasees based on contract (oral or written) or in tort or common law, (iii) any Claims based on or arising under any civil rights or employment discrimination laws (including, but not limited to, the Americans with Disabilities Act, Title VII of the Civil Rights Act of 1964, and the Pennsylvania Human Relations Act), (iv) any Claim based on or arising out of Pruitt's employment by Miller & Hartman and the terminations thereof, and (v) any Claim for costs, counsel fees, expert witness fees, medical or psychiatric bills, compensatory damages, punitive damages and liquidated damages. Pruitt and the DOL understand that, by signing this Agreement, they are waiving all Claims they have or may have against any Releasee that arose or may have arisen before they sign this Agreement. As set forth in paragraph I (b) of this Agreement, Pruitt and the DOL further agrees to the dismissal of the Action with prejudice.

Agreement Not to Sue. Pruitt and the DOL also agree: (a) not to sue any Releasee on or for any Claim released in this Agreement and (b) not to seek or accept any relief through any legal, equitable or administrative proceedings that may be commenced by any other person or entity to the extent such relief is

based on or encompasses any Claims released herein by Pruitt and the DOL.

Pruitt and the DOL further agree that if they were to breach such obligation, they will be liable for all of the costs, expenses and attorney's fees incurred by any Releasee in defending or opposing the assertion of any released Claims or any requests for any such relief.

4. No Rehiring. Pruitt acknowledges and agrees that his employment with Miller & Hartman has permanently and irrevocably ended, and that he will not seek employment or re-employment with Miller & Hartman at any future time. Miller & Hartman agrees to provide a letter for Pruitt confirming his dates of employment and the position that he held.

5. Non-disparagement. Other than as legally required by Section 391.23 of the Federal Motor Carrier Safety Regulations (or any other applicable law or regulation), Miller & Hartman agrees that it will not, at any time, engage in any action, directly or indirectly, that suggests or implies any negative or unfavorable condition regarding Pruitt's employment with Miller & Hartman or the termination of his employment. Other than as legally required by Section 391.23 of the Federal Motor Carrier Safety Regulations (or any other applicable law or regulation), copies of Pruitt's personnel records that may be forwarded to any future prospective employer shall be expunged of all materials regarding or referring to the basis for his termination and the filing of the STAA complaint, and Miller and Hartman agrees to limit the information provided to future prospective employers to dates of employment and rates of pay. Pruitt agrees

that he will not, at any time, engage in any action, directly or indirectly, that suggests or implies anything negative about the terms of his employment with Miller & Hartman or the reasons for his termination.

6. Severability. If any of the provisions of this Agreement are determined to be invalid or unenforceable for any reason, the remaining provisions and portions of this Agreement shall be unaffected thereby and shall remain in full force to the fullest extent permitted by law, so long as the provision found to be unenforceable does not invalidate the consideration of this Agreement.

7. Survivability and Assigns. This Agreement is binding on all parties and on their successors, heirs and assigns, and inures to the benefit of each of the Releasees and their predecessors, successors, heirs and assigns.

8. Knowing and Voluntary Waiver. Pruitt acknowledges that he has been advised of his right to consult with his own attorney before signing this Agreement, and represents that he, in fact, has consulted with the DOL's solicitors. Pruitt further acknowledges that he is signing this Agreement voluntarily and of his own free will, with full knowledge of the nature and consequences of its terms, and he has been given a reasonable period of time to consider this Agreement before signing it.

9. No Admission. The terms of this Agreement and Release shall in no way be construed as an admission by Miller & Hartman or by any other Releasee that it acted wrongfully or unlawfully with respect to Pruitt or that Pruitt has any rights whatsoever against Miller & Hartman or against any current or former officer, director or employee of Miller & Hartman. This Agreement and Release shall not be admissible in any court of law as evidence of any unlawful behavior by Miller &

Hartman or any other Releasee. Miller & Hartman specifically disclaims any liability to or wrongful acts against Pruitt on the part of itself and its parents or affiliates and the current or former officers, directors and employees of any such companies and successors or assigns. Miller & Hartman has entered into this Agreement for the sole purpose of resolving disputed claims without the expense and uncertainty of further litigation.

10. Fees and Costs. Each party agrees to bear its own attorneys' fees, costs and other expenses incurred by such party in connection with any stage of this proceeding including, but not limited to, attorney's fees and costs which may be available under the Equal Access to Justice Act, as amended.

11. Miscellaneous. All executed copies of this Agreement, and Photocopies thereof, shall have the same force and effect and shall be as legally binding and enforceable as the original.

12. Entire Agreements; Amendments. This is the complete and final agreement between the parties and supersedes all prior or contemporaneous agreements, offers, negotiations, representations, discussions, or communications, whether oral or written, with respect to any subject matter or this Agreement. No representations, warranties or promises have been made by or to any party to this Agreement with respect to the subject matters of the Agreement other than as expressly set forth herein. In deciding whether to enter into this Agreement, Pruitt is not relying on any promises, statements, or representations other than those that are expressly set forth herein. This Agreement shall not be modified or amended except by a further written agreement signed by Pruitt, the DOL, and Miller & Hartman.



THE UNDERSIGNED, intending to be legally bound, have executed this Agreement and Release on the dates indicated below.

MILLER & HARTMAN, INC.

By: \_\_\_\_\_  
Date

\_\_\_\_\_  
James Pruitt

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE SOLICITOR

By: \_\_\_\_\_  
Jacqueline A. Hershey, Esq. Date



